

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT DENIED TO
ROBERT GREEN BY THE CITY OF
BREMERTON.

ROBERT H. GREEN,
Appellant,

v.

CITY OF BREMERTON,
Respondent.

SHB No. 79-29
FINAL
FINDINGS OF FACT,
CONCLUSIONS OF
OF LAW AND ORDER

This matter, the request for review of the City of Bremerton's denial of a variance permit, was brought before the Shorelines Hearings Board, David Akana, Chairman, Chris Smith, Rodney Kerslake, David W Jamison, Members, on August 23, 1979 in Tacoma, Washington. Hearing examiner William A. Harrison presided.

Appellant Robert Green appeared and represented himself. Respondent, City of Bremerton, was represented by M.

1 Karlynn Haberly, Assistant City Attorney. Reporter Nowell
2 Martinat recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were
4 examined. Having heard the testimony, having examined the
5 exhibits, having heard and read argument and being fully
6 advised, the Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I

9 This matter concerns a site, in Bremerton, bordered on
10 its north and east sides by waters of Port Washington Narrows,
11 on the west by Snyder Avenue and on the south by a site also
12 owned by appellant. Appellant, Robert Green, purchased the
13 site in 1975. The site has been previously filled and
14 bulkheaded with the bulkhead presently in disrepair. The
15 bulkhead, when repaired, will constitute the ordinary high
16 water mark.

17 On October 5, 1977, the City of Bremerton ("City")
18 adopted its initial shoreline master program ("master
19 program"). This designated the site in question as Urban
20 Residential. Appendix D of the master program which the State
21 Department of Ecology approved by letter on October 24, 1978,
22 provides that, in Urban Residential environments:

23 Every building (excluding uncovered
24 and unenclosed decks, platforms,
25 steps and porches) shall have a
26 minimum twenty-five (25) foot
27 setback from the ordinary high
water mark.

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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II

Appellant knew of the City's shoreline setback requirement before his certificate of short plat, subdividing his property into two parcels, was filed with the County Auditor on November 14, 1978. On the smaller of these (Parcel "A") he intended to construct a single family residence for the use of himself and his family. The larger (Parcel "B") he intended to sell. Parcel "A" which is the subject of this matter, has less than 60 feet of frontage on Snyder Avenue; Parcel "B" has some 90 feet of such frontage. Parcel "A" meets the minimum lot size requirements of the City zoning code.

III

On February 26, 1979, appellant applied to the City for a shoreline variance permit to allow construction of his single family residence on Parcel "A", waterward of the 25 foot setback line on its north side. After public hearing the City Commissioners denied appellant's application on June 5, 1979. From this appellant appeals.

The construction of appellant's proposed residence forward of the 25 foot setback line would reduce the view of the water from the residence west of the site, across Snyder Avenue.

IV

The State Department of Ecology approved the City's master program by emergency rulemaking under the Administrative

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1 Procedure Act, chapter 34.04 RCW on June 22, 1979. It further
2 filed notice of its intent to adopt the same as permanent
3 rules, and that the adoption would take place on August 2, 1979.

4 Appellant applied to the City for a building permit for
5 his residence in question on July 25, 1979.

6 V

7 Any Conclusion of Law which should be deemed a Finding
8 of Fact is hereby adopted as such.

9 From these Findings the Shorelines Hearings Board comes
10 to these

11 CONCLUSIONS OF LAW

12 I

13 Appellant's proposed single family residence for his own
14 use constitutes a "development" as that term is defined by the
15 Shoreline Management Act at RCW 90.58.030(3)(d). There is no
16 evidence on this record which would render the same a
17 "substantial development" in light of the general exclusion of
18 such residences from the definition of that term. RCW
19 90.58.030(3)(e)(vi).

20 We therefore refer to RCW 90.58.140(1) which provides:

21 "No development shall be undertaken
22 on the shorelines of the state except
23 those which are consistent with the
24 policy of this chapter and, after
25 adoption or approval, as appropriate
26 the applicable guidelines, regulations
27 or master program. (Emphasis added.)
... .

26 FINDINGS OF FACT,
CONCLUSIONS OF LAW
27 AND ORDER

Appellant requests review of the City's denial of a permit to vary from the setback requirements of a master program. We have previously held that a master program cannot become effective until adopted or approved by the Department of Ecology in accordance with the rule adoption procedures of the Administrative Procedure Act, (APA) chapter 34.04 RCW. State v. Kitsap Co., SHB No. 78-37 (Order granting motion for partial summary judgment, May 29, 1979). We cited therein RCW 90.58.100(1),-.120 and Harvey v. Board of County Commissioners, 90 Wn.2d 473, 584 P.2d 391, 393 (1978). We note that the City's permit denial now on review occurred on June 5, 1979, and therefore prior to the earliest Department of Ecology APA adoption procedure on June 22, 1979. (See Findings of Fact III and IV supra). It follows that the variance application and denial which we now review are nullities inasmuch as the master program containing the setback to be varied was not effective when the variance application was made or denied.

II

We are not called upon to ascertain when the appellant becomes vested with the right to use his land in accordance with the shoreline law as it exists at a particular point in time. Assuming that appellant is now subject to the setback

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1 requirements of the master program, we observe that there are
2 at least three alternatives open to the appellant.

3 1. Build on Lot A as now platted (assuming that the
4 "buildable area" meets building code requirements).

5 2. Make a revised short subdivision moving the southern
6 boundary of Lot A southward, so as to allow the proposed
7 residence without encroachment into the shoreline setback.

8 3. Make a reapplication for variance from the shoreline
9 setback provisions. Any ruling on such a variance application
10 should await resolution against appellant as to the above two
11 alternatives. Until appellant has pursued the first two
12 alternatives, his request for a variance is premature.

13 III

14 Any Finding of Fact which should be deemed a Conclusion
15 of Law is hereby adopted as such.

16 From these Conclusions the Board comes to this

17 ORDER

18 The City of Bremerton's denial of appellant's
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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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application for a variance permit, and said application, are
both hereby declared null and void.

DATED this 26th day of September, 1979.

SHORELINES HEARINGS BOARD



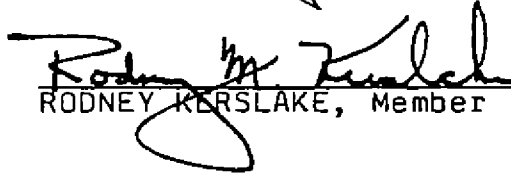
DAVID AKANA, Chairman



CHRIS SMITH, Member



DAVID W JAMISON, Member



RODNEY KERSLAKE, Member

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